

REMARKS

Claims 10-30 are now in the application. Claim 10 has been amended to recite “which upon the addition of water becomes a bioresorbable, injectable implant product” for purposes of clarification and not to limit its scope. Claim 13 has been amended to recite “the materials of said hydrogel precursor comprise” for purposes of consistency with claim 10, from which it depends, and not to limit its scope. Claim 20 has been amended to render it a method for making claim. Claims 21 and 22, which depend from claim 20 have also been amended to recite a method. Claims 23 and 27 have been amended to recite “; said gel” as suggested by the examiner for purposes of clarification and not to limit their scope. The dependency of claim 24 has been corrected to depend from claim 10 instead of canceled claim 1. Claims 25 and 26 have been amended to depend from claim 24 instead of claim 23 for purposes of clarification and not to limit their scope. Claims 28-30 find support for example in the first paragraph on page 1 of the specification. The amendments to the claims and newly presented claims do not introduce any new matter.

The rejections of Claims 13-17, 20-23 and 25-27 under 35 USC 112, second paragraph have been overcome by the above amendments to claims 13, 20, 23, and 25-27.

Claims 21 and 22 were rejected on the grounds of obviousness-double patenting over claims 14 and 2 respectively of US Patent 6,716,251. This rejection of obviousness-double patenting of Claims 21 and 22 has been addressed by the amendment to these claims and/or is not tenable since claims 21 and 22 are now method of making claims. The claims in US Patent 6,716,251 did not include method of making claims.

Claims 10-23 were rejected under 35 USC 103(a) as being unpatentable over US Patent 5,356,629 to Sander et al.(hereinafter also referred to as “Sander”) in view of US Patent 5,470,582 to Supersaxo et al. (hereinafter also referred to as “Supersaxo”). The cited references do not render obvious claims 10-23.

Sander relates to moldable implants. The examples of Sander refer to the moldable compositions as putties. These are not capable of being injected. One of ordinary skill in the art understands the definition of “gel,” and would never consider a “putty” composition to fall within that definition. A gel can be defined as “a colloid in which the disperse phase has combined with the continuous phase to produce a jelly-like product.” See Hawley’s Condensed Chemical Dictionary 555 (12th Ed. 1993). Moreover, the compositions of Sander would not be suitable for injection into a subject as disclosed in the present application. For instance, a putty is typically much too thick for such purpose. The malleable putties of Sander are not inherently either a hydrogel, or inherently injectable.

In addition, Sander does not require employing microparticles as recited in the present claims. In fact, the particle size seems to be irrelevant in Sander since the examples fail to even remotely refer to the particle sizes used.

Supersaxo does not overcome the above discussed deficiencies of Sander with respect to rendering obvious claims 10-23. Supersaxo was merely relied upon for a disclosure of freeze drying in order to stabilize the materials for storage. Accordingly, even if Supersaxo were combined with Sander, the present invention would still not be suggested.

Claims 24-27 were rejected under 35 USC 103(a) as being unpatentable over Sander and Supersaxo and further in view of US Patent 5,599,852 to Scopelianos et al. The cited references do not render obvious claims 24-27. Scopelianos et al do not overcome the above discussed deficiencies of Sander and Supersaxo with respect to rendering obvious claims 10-23. Scopelianos et al were merely relied upon for a disclosure of including a kit with a syringe. Accordingly, claims 24-27 are patentable for at least those reasons as to why claim 10 is patentable.

In view of the above, consideration and allowance are respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

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The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185.

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